

MAR 11 2013

SENATE CONCURRENT RESOLUTION

REQUESTING THE COMPTROLLER TO ESTABLISH A TASK FORCE TO STUDY
THE STATE PROCUREMENT CODE AND IDENTIFY AMENDMENTS THAT
WOULD INCREASE THE ECONOMY, EFFICIENCY, EFFECTIVENESS, AND
IMPARTIALITY IN THE PROCUREMENT OF PUBLIC WORKS
CONSTRUCTION PROJECTS.

1 WHEREAS, chapter 103D, Hawaii Revised Statutes, governs the
2 procurement of goods, services, or construction by state and
3 county agencies; and
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5 WHEREAS, pursuant to chapters 103D and 103F, Hawaii Revised
6 Statutes, the mission of the State Procurement Office is to
7 promote economy, efficiency, effectiveness, and impartiality in
8 procurement for state and county governments through
9 development, implementation, and maintenance of policies and
10 procedures that provide for broad-based competition,
11 accessibility to government contracts, and fiscal integrity in
12 an open, fair, and transparent procurement process; and
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14 WHEREAS, the State Procurement Office adopts rules to
15 implement the procurement law for all state and county agencies;
16 provides coordination, review, analysis, implementation, and
17 oversight services for various procurement projects; and
18 provides training to ensure compliance with procurement laws;
19 and
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21 WHEREAS, chapter 103D, Hawaii Revised Statutes, was based
22 on the framework provided by the American Bar Association's
23 Model Procurement Code for State and Local Governments and was
24 enacted to increase competition, ensure fairness, and establish
25 greater uniformity in the public procurement of goods and
26 services; and
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28 WHEREAS, the state procurement code has been amended more
29 than forty times since its enactment in 1993, and the numerous



1 statutory changes have resulted in increased complexity in the
2 procurement process; and

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4 WHEREAS, in an effort to promote economy, efficiency, and
5 fairness in public procurement, it is important to identify
6 factors that may cause delays in the procurement process,
7 including unnecessary bid preferences, bid protests, and
8 increased contract prices for publicly funded infrastructure and
9 construction projects; and

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11 WHEREAS, the Hawaii Supreme Court's decision in *Okada*
12 *Trucking Co., Ltd. v. Board of Water Supply*, 97 Haw. 450 (2002),
13 is widely interpreted to mean that general engineering
14 contractors and general building contractors are prohibited from
15 undertaking any work, solely or as a part of a larger project,
16 that would require the general contractor to act as a specialty
17 contractor in any area where the general contractor has no
18 license; and

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20 WHEREAS, section 103D-302, Hawaii Revised Statutes,
21 requires that all subcontractors to be used on a public works
22 project be listed on the bid proposal submitted to any state
23 agency in response to a bid request; and

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25 WHEREAS, the State currently recognizes over ninety-eight
26 different specialty contractor licenses that a bidder must
27 review to determine whether a particular subcontractor specialty
28 must be listed on a bid; and

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30 WHEREAS, the federal government does not require the
31 listing of subcontractors on any bid proposal and does not
32 require a contractor's license to bid; rather, it relies on
33 bonding and qualification of the prime contractor in awarding
34 bids; and

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36 WHEREAS, many recent bid protests have been based solely on
37 subcontractor listing and licensing issues, resulting in major
38 delays and cost increases on public works construction projects;
39 and

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41 WHEREAS, since the *Okada* decision, the number of bid
42 protests based solely on a subcontractor listing have increased
43 significantly, costing state taxpayers over \$1,000,000; and



1 WHEREAS, Act 173, Session Laws of Hawaii 2012, requires the
2 State Procurement Office to maintain statistics on solicitations
3 and awards protested under section 103D-701, Hawaii Revised
4 Statutes, for the purpose of improving procurement procedures;
5 and

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7 WHEREAS, it is important to continue to gather bid protest
8 data and to study past bid protest outcomes to further determine
9 where costs have increased due to bid protests in public works
10 construction projects; now, therefore,

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12 BE IT RESOLVED by the Senate of the Twenty-seventh
13 Legislature of the State of Hawaii, Regular Session of 2013, the
14 House of Representatives concurring, that the Comptroller is
15 requested to establish a task force to determine the impact of
16 the *Okada Trucking Co., Ltd. v. Board of Water Supply*, 97 Haw.
17 450 (2002), decision on bid protests and the cost impacts that
18 bid protests have had for public works construction projects;
19 and

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21 BE IT FURTHER RESOLVED that the Comptroller, or the
22 Comptroller's designee, is requested to serve as chair of the
23 task force; and

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25 BE IT FURTHER RESOLVED that the Comptroller is requested to
26 solicit representatives from the following entities to serve on
27 the task force, provided that those persons designated shall be
28 knowledgeable of procurement procedures and issues within their
29 respective organizations:

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31 (1) The State Procurement Office;
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33 (2) The University of Hawaii;
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35 (3) The Department of Education;
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37 (4) The Office of Hawaiian Affairs;
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39 (5) The Department of Transportation;
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41 (6) A county procurement department;
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43 (7) A county board or department of water supply;
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1 (8) The semi-autonomous public transit agency of the City
2 and County of Honolulu;

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4 (9) The Subcontractors Association of Hawaii;

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6 (10) The Building Industry Association; and

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8 (11) The General Contractors Association of Hawaii; and

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10 BE IT FURTHER RESOLVED that the task force is requested to:

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12 (1) Identify ways in which the state procurement code may
13 increase the economy, efficiency, effectiveness, and
14 impartiality in the procurement of public works
15 construction projects;

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17 (2) Propose amendments to the state procurement code that
18 may increase efficiency and mitigate causes for bid
19 protests in public works construction projects; and

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21 (3) Determine whether administrative rules governing
22 contractors reflect the intent of the Legislature and
23 chapter 103D, Hawaii Revised Statutes, particularly as
24 to the scope of work for the three contractor
25 classifications, in order to eliminate construction
26 trade disputes and diminish the number of bid
27 protests; and

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29 BE IT FURTHER RESOLVED that members of the task force are
30 requested to serve without compensation, but may be reimbursed
31 for expenses, including travel expenses, necessary for the
32 performance of their duties; and

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34 BE IT FURTHER RESOLVED that the task force is requested to
35 submit its findings and recommendations, including any proposed
36 legislation, to the Legislature no later than twenty days prior
37 to the convening of the Regular Session of 2015; and

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39 BE IT FURTHER RESOLVED that the Legislative Reference
40 Bureau is requested to assist the task force in drafting
41 proposed legislation; provided that the task force submits its
42 request for proposed legislation, if any, to the Legislative
43 Reference Bureau no later than November 1, 2014; and



1 BE IT FURTHER RESOLVED that the task force shall be
 2 dissolved on June 30, 2015; and
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4 BE IT FURTHER RESOLVED that certified copies of this
 5 Concurrent Resolution be transmitted to the Governor, President
 6 of the Senate, Speaker of the House of Representatives, Attorney
 7 General, Comptroller, Chief Procurement Officer, Director of
 8 Transportation, Superintendent of Education, Administrator of
 9 the Office of Hawaiian Affairs, President of the University of
 10 Hawaii System, Director of the Legislative Reference Bureau, the
 11 Mayor of each county, the board or department of water supply of
 12 each county, Executive Director of the Subcontractors
 13 Association of Hawaii, Executive Director of the Building
 14 Industry Association - Hawaii Chapter, and the Executive
 15 Director of the General Contractors Association of Hawaii.
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OFFERED BY:

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